

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

First Appeal No. 2618 of 2005

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar' orders. Court' or Judge' orders

Mr. A.V. Chatuphale for appellant.

CORAM: R.M.S. KHANDEPARKAR
&
SMT. R.S. DALVI JJ.
DATE:07/03/2006

P.C.:

The appellant challenges the judgment and order dated 12.8.2005 passed by the Civil Judge, Senior Division Palghar. By the impugned judgment the suit filed by the appellant has been dismissed. The suit was for a declaration that the appellant is the owner of the suit property on the basis of the adverse possession thereof. Undisputedly, the person whom the property belonged, was not arrayed as defendant in the suit.

2. The suit was filed against the Government of Maharashtra. Undisputedly the plea of adverse possession was not raised against

the government of Maharashtra. Besides even in the plaint there was no disclosure as to since when the alleged possession of the property held by the appellant as the tenant thereof became adverse to the interest of the owner thereof. The specific plea was that the name of the grand father of the applicant was recorded in the record of rights in relation to the suit property as tenant thereof. Once it was the case of the appellant himself that he was the tenant in relation to the suit property, the question of his possession of the property assuming the character of adverse nature to the interest and right of the owner, does not arise. Tenancy pre-supposes a contract between the lessor and the lessee. Since when the possession of the property with the appellant became adverse to the owners thereof is not known, no fault can be found with the impugned judgment. In fact the suit ought to have been dismissed in limine, by the court below on the basis of the plea raised in the plaint itself. There being absolutely no case for the defence, the appeal is liable to be dismissed in limine. The appeal is accordingly dismissed.

(SMT. R.S. DALVI J.) (R.M.S.KHANDEPARKAR J)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Civil application no. 6425 of 2005
in
First Appeal No. 2618 of 2005

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar' orders. Court' or Judge' orders

Mr. A.V. Chatuphale for appellant.

CORAM: R.M.S. KHANDEPARKAR
&
SMT. R.S. DALVI JJ.
DATE:07/03/2006

P.C.:

Since the first appeal is dismissed this application
does not survive. Hence this civil application is
also dismissed.

(SMT. R.S. DALVI J.) (R.M.S.KHANDEPARKAR J)